

*United States Court of Appeals
for the Second Circuit*



**APPELLANT'S
APPENDIX**

77-1046

To be argued by
JONATHAN J. SILBERMANN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,
-against-

ISRAEL SAFRIN,

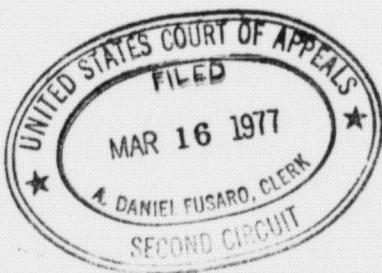
Defendant-Appellant.

Docket No. 77-1046

B
PLS

APPENDIX FOR APPELLANT ISRAEL SAFRIN

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK,
AFFIRMING A JUDGMENT
OF THE UNITED STATES MAGISTRATE'S COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY
Attorney for Appellant
ISRAEL SAFRIN
FEDERAL DEFENDER SERVICES UNIT
509 United States Court House
Foley Square
New York, New York 10007
(212) 732-2971

JONATHAN J. SILBERMANN,
of Counsel.

PAGINATION AS IN ORIGINAL COPY

JUDGE MAGISTRATE Assigned	U.S.	76 CR 443-1	Case Filed Mo. Day	7 9	76 443 1
CRIMINAL NO. 207	070	vs	No. of Dcts.	*	U.S. MAGISTRATE
DEMEANOR Mis FELONY Fel	District Office	(LAST FIRST MIDDLE) ISRAEL SAFRIN	JUVENILE	1	U.S. MAG. CASE NO. 76 M 817

U.S. TITLE/SECTION

18:1701

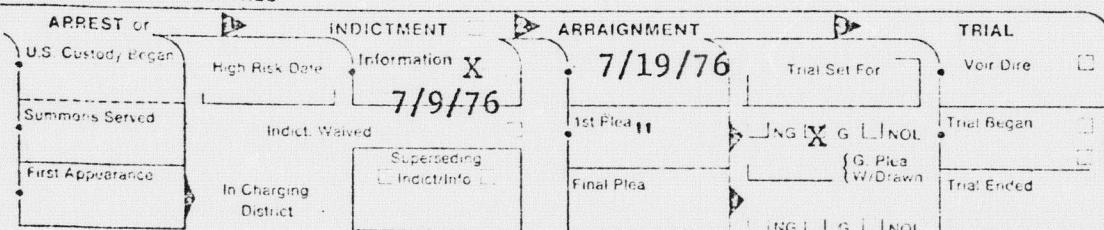
OFFENSES CHARGED
Possession of stolen mail

ORIGINAL COUNTS

1

CLOSED

II. KEY DATES & INTERVALS



<input type="checkbox"/> Bail Denied	AMT \$ 1,000	<input checked="" type="checkbox"/> Fugitive
<input type="checkbox"/> Set	<input checked="" type="checkbox"/> Pers. Recog.	<input type="checkbox"/> LPFA conditions
<input type="checkbox"/> Date 4/20/76		<input type="checkbox"/> 10% Deposit
<input type="checkbox"/> Bail Not Made		<input type="checkbox"/> Surely Bond
<input type="checkbox"/> Status Changed (See Docket)		<input type="checkbox"/> Collateral
<input type="checkbox"/> 3rd Ptry Cust		<input type="checkbox"/> Other
<input type="checkbox"/> Disposition of Charges		<input type="checkbox"/> On All Charges
<input type="checkbox"/> Convicted		<input type="checkbox"/> On Lesser Offenses
<input type="checkbox"/> Acquitted		<input type="checkbox"/> WP
<input type="checkbox"/> Dismissed		<input type="checkbox"/> On Government's Motion

MAGISTRATE					
SEARCH WARRANT	DATE	INITIAL/NO.	INITIAL APPEARANCE DATE	OUTCOME	
Issued			4/20/76	<input type="checkbox"/> DISMISSED	
Return				<input checked="" type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT	
SUMMONS	Issued			<input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW	
Served					
ARREST WARRANT ISSUED					
COMPLAINT	4/20/76	VAC/070A	INTERVENING INDICTMENT		
OFFENSE (In Complaint)	Possession of stolen mail - T. 18 USC Sec. 1708				

U.S. Attorney or Asst.

ATTORNEYS Defense CJA Ret Waived Self None Fed LCD

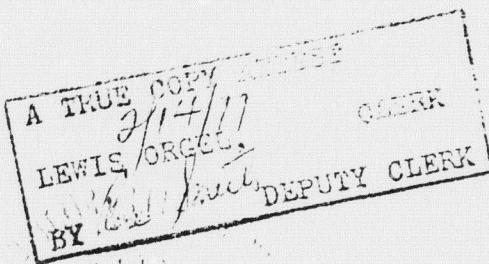
Jordan Levin Epstein, Esq.
Josephine Y. King AUSA

Legal Aid Society
26 Court Street
Brooklyn, New York Att: Marion Seltzer, Esq.

* Show last names and suffix numbers of other defendants on same indictment if more than one.

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY
4/20/76		Arraignment **Bail limits extended to all NY State Information filed.	
7/9/76			
7-13-76 k		Before Chrein, Mag. - adjd to July 19, 1976 for pleading.	
7/19/76		Before CATOGGIO, J. - Case called. Deft & Counsel present. Deft executed Waiver of Jury Trial before Court & consented to trial without jury. Deft pleaded guilty in accordance to Rule 11. Bail continued. Full presentence report ordered.	
8-30-76		Before CATOGGIO, Mag. - case called - deft & counsel present - Imposition of sentence is suspended and the deft is placed on probation for 3 years - deft fined \$100- special condition of probation is that the deft is to make full restitution.	
8-30-76		Judgment and order of probation filed - certified copies to probation	
9/7/76		Notice of appeal filed.	
9-7-76		Docket entries and duplicate of notice on appeal forwarded to Probation Department Judge picked at Random selection	
9-28-76		Judge Platt. Satisfaction of fine judgment filed	

DATE DOCUMENT NO.	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
			Initial Action(s) (a)	Stenop. Transcr. (b)	Lit. Conc. (c)	Total Days (d)
11-11-76	Stenographers transcript dated Aug. 30, 1976 filed and voucher for compensation of Eastern Transcribing Service filed.					
12-20-76	Copy of appellant's brief filed.					
1-6-77	Copy of Appendix to Appellant's Brief filed.					
1-17-77	Brief for Appellee filed					
1/19/77	Reply brief for appellant filed.					
1.21.77	Before Platt, J.- Case Called. Appeal from sentence of Catoggio, U.S. Magistrate argued and affirmed. Order to be submitted.					
1.28.77	By Platt, J.- Order filed that the judgment of the Magistrate's Court in the case is affirmed.					
1.28.77	Notice of Appeal filed.					
1.28.77	Copy of Docket entries and duplicate copy of Notice of Appeal mailed to the Court of Appeals.					
2.2.77	Brief for Appellee on appeal from a judgment of the United States Magistrate's court for the Eastern District of N.Y. filed and forwarded to Chambers.					
2-11-77	Scheduling Order filed that the record on appeal be docketed on or before 2-14-77					



FEE AND RESTORATION PAYMENTS

DATE

CERTIFICATE

COPIES

DATE

CERTIFICATE

COPIES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----- x

UNITED STATES OF AMERICA

-against-

ISRAEL SAFRIN,

Defendant.

----- x
THE UNITED STATES ATTORNEY CHARGES:

76 CR 443

INFORMATION

Cr. No.

(T. 18 U.S.C. §1701)

FILED

IN CLERK'S OFFICE

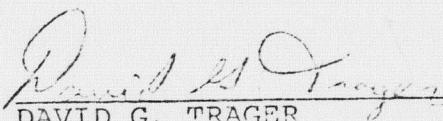
U. S. DISTRICT COURT E.D. N.Y.

JUL 9 - 1976

TIME A.M.

P.M.

On or about the 5th day of November, 1975, within the Eastern District of New York, the defendant ISRAEL SAFRIN knowingly and wilfully obstructed the passage of mail by having in his possession a check which had been enclosed in a letter placed in the mail and not directed to the defendant, ISRAEL SAFRIN, such letter having been addressed to Beatrice Serafini, 1103 55th Street, Brooklyn, New York 11219, the payee on the check.


DAVID G. TRAGERUNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X -----
UNITED STATES OF AMERICA : TIME A.M.
: P.M.
-against- : Criminal Docket No. 76CR443
ISRAEL SAFRIN, :
defendant :
----- X -----

United States District Court
Eastern District of New York
225 Cadman Plaza East- Room 290
Brooklyn, New York 11201

August 30, 1976

BEFORE:

HONORABLE VINCENT A. CATOGGIO
United States Magistrate

A P P E A R A N C E S:

MARION SELTZER, ESQ.
Associate Attorney, LAS; Attorney for Defendant

ISRAEL SAFRIN
Defendant

TRANSCRIBED BY:
EASTERN TRANSCRIPTION SERVICE

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MAGISTRATE CATOGGIO: Israel Safrin. You pleaded guilty; Israel Safrin is here with Ms. Seltzer, his attorney, Legal Aid, with Mr. Adlerstein representing the government. You pleaded guilty on July 19, 1976 to violation of Section 1701 of Title XVIII. Are you ready for sentence.

MR. SAFRIN: Yes I am.

MAGISTRATE CATOGGIO: Do you have anything you want to say, why sentence should be light, or anything else. You are free to say what you want.

MR. SAFRIN: Well I think my sentence should be light.

MAGISTRATE CATOGGIO: I think my sentence should be light. I'm sorry about what happened and I made restitution of most of the money that was taken and if I could get another chance, I think I'd be all right.

MAGISTRATE CATOGGIO: Anything else you want to say.

MS. SELTZER: Judge, if I could just say something.

MAGISTRATE CATOGGIO: Yes.

MS. SELTZER: I have had considerable contact with both Mr. Safrin and his mother, who is here in court, and I don't know if (unintelligible) reflects the great

sorrow and anguish that the whole family has gone through because of this arrest; it certainly is not a usual thing in a family such as the [redacted] which Mr. Safrin comes from; I think the report reflects that he has an exemplary background, is a hard working person, he certain has never been in any kind of trouble, he is a teacher and he is a college student and

MAGISTRATE CATOGGIO: He's a teacher?

MS. SELTZER: Yes, he's a teacher.

MAGISTRATE CATOGGIO: Where?

MS. SELTZER: He teachers at a.....

MR. SAFRIN: A parochial school.

MS. SELTZER: In Brooklyn. And, it just seems to me that this has been some kind of a re-awakening for him and his understanding of himself and his relationships with himself and his family and I think the whole family has suffered over this case. I have spoken to his father, I've spoken to his mother, spoken to friends of the family who have called me and have shown concern and it just seems to me that if ever there was a case where you will not see this man again, this is certainly that case. I think the report reflects that, a person who interviewed Mr. Safrin and interviewed the family was very impressed with the background, the home, and I think with him and I will just

ask that you be lenient and you put him on probation.

MAGISTRATE CATOGGIO: Well you had quite an operation going and you really should go to jail but I won't send you to jail.

MR. SAFRIN: Thank you Your Honor.

MAGISTRATE CATOGGIO: You are over 22 when you pleaded guilty so there's a question whether I can sentence you as a young adult offender.

MS. SELTZER: Well it would seem to me that the way the statute is written up to the age of 26, you have that jurisdiction Judge.

MAGISTRATE CATOGGIO: Oh no, under 22 they are entitled to it, over 22 there has to be definite reasons why and I have to make a finding if it is in the public interest and in the interest of this boy.

MS. SELTZER: Well, what I would ask Judge, is that apparently you are not that familiar with what's in the conclusions in the report, perhaps if you had a chance to re-read it, it would refresh your recollection. I think that the report indicates that this is certainly a young man who has an excellent future; I'm sure you will recall that when you re-read the report.

MAGISTRATE CATOGGIO: Yes, but the trouble is that this was not an isolated check.

MS. SELTZER: Well there was a series of approximately 7 checks.

MAGISTRATE CATOGGIO: Yes.

MS. SELTZER: You will also recall your Honor that restitution was made, that....

MAGISTRATE CATOGGIO: Well complete restitution has not been made.

MR. SAFRIN: Most of that figure there is much less because I gave the money back to the bank, which the probation officer could not verify, even though the figure is about \$100, it is considerably less than that.

MS. SELTZER: I really think your Honor it would be a grave injustice if you didn't seriously consider the benefits of giving Mr. Safrin your Corrections Act.

MAGISTRATE CATOGGIO: Well *I* just reversed one of my judges in a case, where he applied the Youth Corrections Act to a boy over 22.

MS. SELTZER: Well I'm sure he didn't have Mr. Safrin's background; I'm sure he didn't have Mr. Safrin's future, Judge.

MAGISTRATE CATOGGIO: Yes, Mr. Safrin has been involved as you say, in 7 checks, it's not an isolated case.

MS. SELTZER: This is one, one transaction
Your Honor, there was....

MAGISTRATE CATOGGIO: Oh no.

MS. SELTZER: There was 1 series of offenses;
he was brought to the Postal Inspector....

MAGISTRATE CATOGGIO: On different dates
he deposited these checks.

MS. SELTZER: But it was in and about the
same period.

MAGISTRATE CATOGGIO: Yes, but they were
different dates.

MS. SELTZER: The point, what I want to ask
Judge, is why, when the young man has a good future, a
young man who is attending Brooklyn College, and who is
a teacher, and who plans to be a teacher, would you,
and who there seems to be absolutely no indication, as
that report would certainly reflect, of this possibly
ever happening again. Why you would want to give him
the possibility of having a criminal record for the rest
of his life.

MAGISTRATE CATOGGIO: Oh, that's something he
should have thought of, he had 7 times, 7 chances to
determine whether he wanted a criminal record. It's not
an isolated case.

MS. SELTZER: The point is, whatever suffering he has done, and whatever penalties he has to pay, are not going to be.....

MAGISTRATE CATOGGIO: Then he comes in and he asks for Legal Aid and he making \$240 a month in one job, and \$120 a week in something else, food supervisor, \$140 a week.

MR. SAFRIN: Well part of that money is going for the restitution.

MAGISTRATE CATOGGIO: I know but you weren't entitled to Legal Aid.

MS. SELTZER: Well I wonder if your Honor ever examined him on that question.

MAGISTRATE CATOGGIO: I am going to recommend that the government go after him, get back the legal fee in the case. Unfortunately, I can only fine him \$100, because it's 1701, if I were free to do it, and I'm going to fine him \$100, if I was free to do it, I'd fine him \$500, so the government would get back money to pay the lawyer.

MS. SELTZER: Well that seems reasonable your Honor, but I don't know if it is reasonable for you to think that branding a person a criminal the rest of his life...

MAGISTRATE CATOGGIO: I'm not branding him, I didn't pass the law.

MS. SELTZER: Well, I've been in this court for as many years as you've been in this court, and it seems to be that we are both aware of the fact that people up until the age of 26 are considered for Youth Corrections Act, especially when they have never been arrested and they've never....

MAGISTRATE CATOGGIO: A month ago, the Second Circuit Court of Appeals rendered a decision, I wish I could find it, but I lost it, the decision, wherein they reversed Judge ^{Wentzel} ~~Wentzel~~, who had sentenced a boy over 22, as a YCA, and they said different procedures had to be followed, and I see nothing in this case which warrants my making a finding as to give this boy the benefit of Youth Corrections Act, it wasn't an isolated case, it was 7 different checks that he absconded with.

MS. SELTZER: He deposited them.

MAGISTRATE CATOGGIO: What? -

MS. SELTZER: I said they were deposited in his checking account.

MAGISTRATE CATOGGIO: I am going to put the defendant on probation for 3 years, and fine him \$100 with the special condition that full restitution be made.

MR. SAFRIN: (unintelligible)

MAGISTRATE CATOGGIO: Excuse me?

MR. SAFRIN: (unintelligible) probation 3 years.

MAGISTRATE CATOGGIO: ^{imprisonment} Suspending (unintelligible)

of any present sentence. I am also going to recommend
that the government take action to recover the expenses
of counselor defending him.

MS. SELTZER: Thank you Judge.

* * * * *

Transcribed by E.T.S.
October 11, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

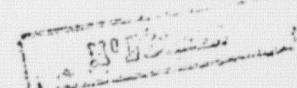
ORDER

-against-

ISRAEL SAFRIN,

76 Cr. 443

Defendant-Appellant.



The judgment of the Magistrate's Court in
the above captioned case is hereby affirmed.

Thomas C. Platt

HON. THOMAS C. PLATT
UNITED STATES DISTRICT JUDGE

New York, New York
January 27, 1977

CERTIFICATE OF SERVICE

March 16 , 1977

I certify that a copy of this brief and appendix
has been mailed to the United States Attorney for the
Eastern District of New York.

Moskow Silbermann